

AIR POLLUTION CONTROL DISTRICT HEARING BOARD RULES AND REGULATIONS

RULE 1. GENERAL

(a) These rules shall apply to all hearings before the Hearing Board of the Air Pollution Control District which shall be held in the designated Hearing Room at 1600 Pacific Highway, San Diego, California.

(b) For purposes of these Rules the terms "day" or "days" shall mean calendar days unless otherwise indicated.

RULE 2. CHAIRPERSON AND VICE CHAIRPERSON

At the first regular meeting of each calendar year, or as soon thereafter as the Board's schedule permits, the members of the Board shall select one of their members to serve as Chairperson of the Board.

At the first regular meeting of each calendar year, or as soon thereafter as the Board's schedule permits, the members of the Board shall select one of their members to serve as Vice Chairperson to fulfill the duties and responsibilities of the Chairperson in his or her absence.

RULE 3. MINUTES; PREPARATION OF RECORD

The Clerk of the Hearing Board shall cause to be recorded in the minutes the time and place of each meeting of the Hearing Board, the names and members present, all official acts of the Hearing Board, the votes by members and, when requested by a member the reasons for the member's dissent or approval, and shall cause the minutes to be prepared forthwith. The minutes or a true copy thereof signed by the Clerk of the Hearing Board shall form part of the permanent record of the Hearing Board.

All proceedings of the Hearing Board shall be recorded. Copies of the recordings will be made available upon request and payment of the fee therefor. In the event a transcript is desired by a party to the proceedings other than the District, the requesting party may arrange for the preparation of such transcript and the cost of such transcript shall be paid by said party. The parties may stipulate with the approval of the Hearing Board that a transcript is the official record of the proceeding. Transcripts may be certified by the Clerk of the Hearing Board provided that the costs of such certification shall be paid by the requesting party.

RULE 4. HEARING BOARD HOURS

The Hearing Board will promptly convene the hearing at the time specified in the Notice of Hearing. The Hearing Board may recess at the discretion of the Chairperson. It will reconvene promptly at the time specified by the Chairperson.

RULE 5. DISQUALIFICATION OF HEARING BOARD MEMBERS

A Hearing Board member shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party or member of the public may request the disqualification of any member by filing an affidavit before the submission of the case, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue raised by the request shall be determined by the other members of the Hearing Board.

RULE 6. QUORUM

Three members of the Hearing Board shall constitute a quorum.

RULE 7. HEARING BY FEWER THAN FIVE MEMBERS

- (a) The Hearing Board may hold a hearing in bank or may designate three or four of their number to hold a hearing.
- (b) If three or more members of the Hearing Board conduct a hearing, the concurrence of three shall be necessary for a decision.

RULE 8. EFFECTIVENESS OF ACTION

The absence or resignation of Hearing Board members shall not affect any action taken by the Board provided:

- (a) A quorum is present, and
- (b) At least three members concur in the decision.

Except for petitions for rehearing under Rule 30(b) and any other matter as to which the time in which the Hearing Board must act has expired, whenever the Hearing Board fails to take action on a matter before it because the motion regarding that matter failed to obtain the required affirmative vote, the Hearing Board shall set a date for reconsideration of the matter. If for any reason the Hearing Board fails to set such date, the Clerk shall list the matter as a pending item on the agenda for the next regular meeting of the Hearing Board.

RULE 9. REPRESENTATION BY COUNSEL

The petitioner or respondent, may be represented by counsel in any matter before the Hearing Board. However, representation is not mandatory and if a party elects to proceed in a matter without counsel said party shall have no right to a rehearing of the matter for the reason that counsel was not present.

RULE 9.5. PUBLIC COMMENT

At each Hearing Board meeting, the Hearing Board shall allow any member of the public to address the Hearing Board on a matter within its jurisdiction. The total amount of time for public testimony shall be no more than five minutes. Any person wishing to address the Hearing Board must complete and deliver to the Clerk of the Hearing Board a "Request to Speak" form prior to the time that the "Public Comment" period commences; the form shall include a description of the subject the speaker wishes to address. A speaker shall not be heard during the "Public Comment" portion of the meeting on a matter listed on the Agenda.

RULE 10. REQUEST FOR HEARING

(a) Except as provided in subdivision (b) of this rule, a request for hearing shall be initiated by the filing of a petition with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, 1600 Pacific Highway, San Diego, California, 92101, and the payment of the fee provided for in APCD Rule 42. If the petition, together with any accompanying documents, contains a total of 10 pages or less, the Clerk of the Hearing Board shall not later than the day the petition is filed transmit a copy of the petition and any accompanying documents to the Air Pollution Control District. If the petition together with accompanying documents contains a total of more than 10 pages, the petitioner shall provide 15 copies to the Clerk of the Hearing Board and shall, not later than the date the petition is filed, also serve the Air Pollution Control at 10124 Old Grove Road, San Diego, California 92131, unless the District or Air Pollution Control Officer is the petitioner. The petitioner shall also serve the petition and any accompanying documents, regardless of length, upon the holder of the permit or variance, if any, involved. Service may be made in person or by mail and service may be proved by written acknowledgment of the person served or by affidavit of the person making the service.

(b) Except as provided in subdivision (c) of this Rule, all petitions shall be filed, and served in such manner as to be received by respondent(s) not later than 14 days before the date set for hearing.

(c) Petitions for a regular variance shall be filed and served not later than 35 days before the date set for hearing.

(d) A request for an emergency variance shall be initiated by calling or contacting the Air Pollution Control Officer. A petition shall be filed and served pursuant to subsection (a) and the fee therefor paid, not later than the second working day following the initial contact. If so filed, and the fee is timely paid, any variance granted may become effective as early as the date of initial contact.

RULE 11. CONTENTS OF PETITIONS

- (a) Every petition shall contain the following information:
 - (1) The name, address and telephone number and telefax number, if available, of the petitioner, or other person authorized to receive service of notices.
 - (2) The type of business or activity involved in the petition and the street address at which it is conducted.
 - (3) A brief description of the article, machine, equipment or other contrivance, if any, involved in the petition, and its location.
 - (4) The section or rule under which the petition is filed, that is whether petitioner desires a hearing:
 - (A) To determine whether a permit was properly suspended under Section 42306 of the Health and Safety Code.
 - (B) To determine whether a permit shall be revoked pursuant to Section 42307 of the Health and Safety Code.
 - (C) For a variance under Health and Safety Code Section 42350;
 - (D) To revoke or modify a variance under Section 42356, Health and Safety Code;
 - (E) To review the denial or conditional granting of a Authority to Construct, Permit to Operate under Health and Safety Code Section 42302 and the APCD Rule 25.
 - (F) To determine, pursuant to Health and Safety Code Section 42302.1, whether a permit was properly issued.
 - (G) To consider adoption, modification, or revocation of proposed Compliance Schedules submitted in accordance with Health and Safety Code Sections 42357 & 42358.
 - (H) To consider a petition for an order for abatement pursuant to Health and Safety Code Section 42451.
 - (5) Each petition shall be verified and signed by petitioner, or by some person on his or her behalf, and where the person signing is not the petitioner, it shall set forth his or her authority to sign.
 - (6) In a petition for revocation of a permit the Air Pollution Control Officer shall allege in addition the rule under which the permit was granted, the rule or section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation.
 - (7) Petitions for reinstatement of suspended permits shall allege in addition the rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and if so, when it will be furnished.
 - (8) A petition for an order of abatement shall allege the statute or rule which is alleged to be violated and shall indicate whether the order sought would have the effect of a variance.

- (b) All petitions shall be typewritten double-spaced, on letter sized paper, on one side of the paper only, leaving a margin of at least four inches at the top and one inch on the left side of the first sheet. All succeeding sheets, shall have a one inch margin at the top and the left side.
- (c) If petitioner chooses to include a memorandum containing legal arguments in support of the petition, such memorandum shall be filed and served with the petition.
- (d) A memorandum containing legal arguments may be filed and served after the petition has been filed and served provided that the petitioner is able to show good cause for the delay in filing. The Hearing Board shall determine whether good cause has been shown prior to considering the memorandum.

RULE 12. PETITIONS FOR VARIANCES

In addition to the matters required by Rule 11, petitions for variance shall include:

- (a) The section, rule or order complained of.
- (b) A written statement of the facts which support petitioner's assertion that conditions required by Health and Safety Code Section 42352 exist, including the following:
 - (1) Facts which show that petitioner is or will be discharging air contaminants in excess of those allowed by Health and Safety Code Section 41701, or in violation of any district rule, regulation, or order;
 - (2) Facts which show that requiring compliance would result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business; and that such results are due to conditions beyond petitioner's reasonable control;
 - (a) the statement of facts shall also state the actions which the petitioner took to comply or seek a variance since the adoption of the rule, regulation, or order from which the variance is sought;
 - (b) statement of facts shall also state facts which show whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required;
 - (3) If petitioner is a public agency, a statement, and facts to support said statement, indicating whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service as defined in Health and Safety Code Section 42352(a)(2).
 - (4) Facts which show that the closing or taking would be without a corresponding benefit in reducing contaminants;
 - (5) Facts which show that petitioner has given consideration to curtailing operations of the source in lieu of obtaining a variance;
 - (6) Facts which show that during the period the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
 - (7) Facts which show that during the period the variance is in effect, the petitioner will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule

established by the District;

- (8) A statement, and facts to support said statement, indicating whether or not petitioner's business is a small business as defined by the Small Business Administration, and whether petitioner's business emits 10 tons or less per year of air contaminants; if the petitioner is a small business and emits 10 tons or less per year of air contaminants, the statement shall also describe:
 - (a) the reasons for any claimed ignorance of the requirement from which a variance is sought;
 - (b) the petitioner's financial and other capabilities to comply;
 - (c) the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.
- (c) For what period of time the variance is sought and why.
- (d) A proposed schedule of "increments of progress" (compliance schedule), if necessary, including the following:
 - (1) The date by which contracts for emission control systems or process modification will be awarded or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;
 - (2) The date of initiation of onsite construction or installation of emission control equipment or process change;
 - (3) The date by which onsite construction or installation of emission control equipment or process modification is to be completed;
 - (4) Such additional increments of progress as may be necessary or appropriate to permit close and effective supervision of progress toward timely compliance; and
 - (5) The date by which final compliance is to be achieved.
- (e) Whether or not operations under such variance, if granted, would constitute a nuisance.
- (f) Whether or not the subject equipment or process is covered by Authorities to Construct or a Permit to Operate issued by the Air Pollution Control Officer, and if so, the permit number.

To the extent possible, the number of emission points, the different nature, if any, of emission points and should include measured values or estimates of the quantity and nature of emissions and the degree of violation of the regulations of the District for the source(s) in question.

- (g) State the amount of emissions and excess emissions, if any.

RULE 13. APPEALS

- (a) Within 30 days after receipt of notice from the Air Pollution Control Officer of denial or conditional approval of an application for an Authority to Construct or a Permit to Operate, the applicant may petition the Hearing Board in writing. The Hearing Board shall, except as provided in Health and Safety Code Section 42302.1, hold a public hearing not more than 30 days after the date the petition was filed, and sustain, reverse, or modify the action of the Air Pollution Control Officer; such order may be subject to specified conditions.

(b) Within 10 days after receipt of notice from the Air Pollution Control Officer of suspension of a permit, the applicant may petition the Hearing Board in writing. The Hearing Board shall, except as provided in Health and Safety Code Section 42302.1, hold a public hearing not more than 30 days after the date the petition was filed, and sustain, reverse, or modify the action of the Air Pollution Control Officer; such order may be subject to specified conditions.

(c) Within 30 days of any decision or action pertaining to the issuance of a permit by the District, as otherwise provided in Health and Safety Code Section 42302.1, any aggrieved person who, in person or through a representative appeared, submitted written testimony, or otherwise participated in the action before the District, may file a petition requesting that the Hearing Board hold a public hearing to determine whether or not the permit was properly issued. The Hearing Board shall hold a hearing and make a decision on the matter within 30 days of the date the petition was filed unless otherwise required by Health and Safety Code Section 42302.1.

(d) In addition to the matters considered by Rule 11, appeals of a denial or conditional approval of an Authority to Construct or Permit to Operate shall set forth a summary of the application or a copy thereof, the alleged reasons for the denial or conditional approval, and the reasons for appeal.

RULE 14. EMERGENCY VARIANCE

(a) A request for an emergency variance pursuant to Health and Safety Code Section 42359.5, shall be initiated and filed pursuant to Rule 10 (d).

(b) Upon receipt of a request for an emergency variance from the District Rules and Regulations, the Chairperson of the Air Pollution Control District Hearing Board, or any other member of the Hearing Board the Chairperson may designate, may issue without notice and public hearing, an emergency variance up to 30 days. An emergency variance shall be issued only if the Chairperson or member(s) finds all of the following:

(1) Good cause exists for granting the variance.

(2) The situation as outlined in the request constitutes an emergency.

(3) The operation resulting from the variance shall not create a private or a public nuisance.

(4) The purpose of the emergency request is not to avoid notice requirements for a hearing on the request.

(5) It is impractical to hear the request at the next scheduled meeting of the Hearing Board.

(6) In the event of a breakdown condition, as defined by APCD Rule 98, the requirements of said APCD Rule 98, and subsection (i) hereof for requesting a variance have been fulfilled.

(c) The Clerk of the Hearing Board shall notify the Air Pollution Control Officer and the person requesting a variance of the time and place of consideration for the request for an emergency variance. Such notification may be made by telephone.

(d) Before granting an emergency variance the Chairperson or designated member(s) of the Hearing Board (1) shall give the Air Pollution Control Officer an opportunity to respond to

the request, and (2) may consult the Air Pollution Control Officer in order to obtain information.

- (e) An emergency variance shall not be granted from the requirement that an Authority to Construct be secured from the Air Pollution Control District before building, erecting, altering, or replacing any article, machine, equipment or other contrivance, which may cause the issuance of air contaminants.
- (f) In granting an emergency variance pursuant to subdivision (a) of this Rule, the Chairperson or designated member(s) of the Hearing Board may impose conditions, as appropriate, which shall remain in effect during the term of the emergency variance.
- (g) The Clerk of the Hearing Board shall notify the Air Pollution Control Officer when an emergency variance is granted pursuant to this rule, and within 30 days shall submit to the California Air Resources Board a copy of the order granting an emergency variance.
- (h) If a variance beyond 30 days will be required, the petitioner may also file a petition for a variance of appropriate duration at the time the petition for the emergency variance is filed pursuant to Rule 10 (d).
- (i) Breakdown Conditions
 - (1) No emergency variance for a breakdown condition as defined in APCD Rule 98 shall be granted unless the Chairperson or other designated member(s) also finds that:
 - (a) The occurrence constitutes a breakdown condition,
 - (b) continued operation is not likely to create an immediate threat or hazard to public health or safety, and
 - (c) the continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national or California ambient air quality standard.
 - (2) An emergency breakdown variance shall remain in effect only for as long as necessary to repair or remedy the breakdown conditions, but in no event after a properly noticed hearing to consider a petition for other than an emergency variance has been held, or 30 days from the date of the subject occurrence, whichever is sooner.

RULE 15. AMENDMENTS

At any time before or after the matter is submitted for decision, the Hearing Board may permit amendment of a party's petition. Such amendment may be made upon 10 days written notice, stipulation of the parties, or upon such terms and conditions as the Hearing Board deems proper.

New information in an amended petition shall be deemed denied by the opposing party. The Hearing Board shall allow oral objections to the amendments and note them in the record. If the opposing party shows he or she will be prejudiced by such amendment, the Hearing board shall continue the matter to afford a reasonable opportunity to prepare a response, or reopen the matter to permit the introduction of additional evidence, as necessary.

RULE 16. ANSWERS

- (a) Any person or entity served with a petition shall file an Answer which may;
 - (1) Object to the jurisdiction of the Hearing Board;
 - (2) Object to the form of the petition;
 - (3) Admit the petition in whole or in part;
 - (4) Present new matter by way of defense.
- (b) Answers shall be filed and served not less than;
 - (1) 5 working days prior to the hearing.
 - (2) In the case of petitions for an emergency variance, the answer may be made orally at the hearing.
- (c) Failure by any person or entity served with a petition to file an answer within the time required by these rules shall constitute a waive of the right to contest the allegations of facts alleged in the petition. The Hearing Board may in its discretion relieve a party of the consequences of such failure to answer upon a showing of good cause. The Hearing Board shall determine whether good cause has been shown prior to considering the answer.
- (d) The Answer shall be signed by or on behalf of the respondent and shall state respondent's mailing address. It need not be verified or follow any particular form.
- (e) If a respondent chooses to include a memorandum of legal arguments in support of the Answer, such memorandum shall be filed and served within the time period allowed for filing the Answer. The memorandum may be filed and served beyond this time period provided that the respondent is able to show good cause for the delay in filing. The Hearing Board shall determine whether good cause has been shown prior to considering the memorandum.
- (f) Answers shall be served on the same parties and in the same manner as petitions are served, and in addition shall be served on the petitioner.

RULE 17. NOTICE OF HEARING

Clerk of the Hearing Board shall mail or deliver a notice of hearing in accordance with the requirements of the Health and Safety Code.

The Agenda for each regular meeting shall be posted on the bulletin board outside Room 310, the Board of Supervisor's Hearing Room, 1600 Pacific Highway, San Diego, California, in accordance with Government Code Section 54954.2(a).

RULE 18. ORDER OF PROCEDURES

(1) The order of proceedings before the Hearing Board shall ordinarily be as follows. The Chair may in its discretion alter the order of proceedings as may be desirable to expedite the business of the board.

- (a) Announcement of pending matters;
- (b) Enter appearances;
- (c) Summary of evidence by District representatives;
- (d) Evidence and Argument by moving party;
- (e) Evidence and Argument by responding party;
- (f) Public testimony;
- (g) Rebuttal evidence or argument, where necessary.

(2) The Chair, may adopt reasonable regulations including, but not limited to, limiting the amount of time allocated for testimony on particular issues and for each individual speaker.

RULE 19. OFFICIAL NOTICE

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this state.

RULE 20. EVIDENCE

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall

be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(d) Petitioners for variances shall present evidence regarding petitioner's efforts to comply after the petition was filed and prior to the hearing.

RULE 21. REQUEST FOR DISCOVERY; STATEMENTS, WRITINGS

A party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (b) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) above;
- (c) All writings which the party then proposes to offer in evidence;
- (d) Any other writing or thing which is relevant and which would be admissible in evidence;
- (e) Investigative reports made by or on behalf of the APCD or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (d), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person, signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

RULE 22. SUBPOENAS

(a) Before the hearing has commenced and during continuances between hearings the Chairperson of the Hearing Board shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum. After the hearing has commenced the Hearing Board may authorize the Chairperson to issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to subdivision (a) shall be extended to all parts of the state and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he or she resides unless the distance be less than 150 miles from his or her place of residence except that the Hearing Board, or the Chairman, prior to the commencement of the hearing, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of three dollars (\$3.00) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

RULE 23. CONTINUANCES

(a) The Hearing Board may grant continuances for good cause shown. Except for good cause, all requests for continuances of matters set for hearing shall be in writing and shall be received by the Clerk of the Hearing Board at least three (3) business days prior to the time set for the hearing, as soon as the moving party discovers or reasonably should have discovered the event or occurrence which establishes good cause. Requests for continuance shall be made only after the requesting party has contacted the other party to discuss the continuance. The written request for continuance shall state when the other party was contacted to discuss the continuance, and it shall state whether the other party opposes or has no objection to the request for continuance. Requests for continuance made orally at the time the matter is set for hearing before the Hearing Board are discouraged and will not be entertained unless the requesting party has discussed the request for continuance with the other party prior to the commencement of the hearing. In considering whether to grant a continuance for good cause after the three (3) business days have lapsed, the Hearing Board will consider whether the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing good cause.

(b) The Hearing Board may find that good cause exists if it finds that the matter before the Hearing Board involves issues which could not be adequately addressed through the filing of the petition and additional memoranda, in the time permitted under these rules and regulations or if the Hearing Board determines that additional time is necessary or desirable to determine the issues or to receive additional evidence or legal argument. If a continuance is granted pursuant to this subsection, the Hearing Board may adopt a schedule according to which the parties shall file and serve any additional materials.

RULE 24. WITHDRAWAL OF PETITION OR APPEAL

The petitioner may withdraw his or her petition or appeal at an time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The withdrawal shall be made in writing to the Clerk of the Hearing Board either by personal service, fax with a follow-up hard copy in the United States mail, or in person before the Hearing Board. E-mail would not be accepted. The Clerk of the Hearing Board shall confirm in writing the withdrawal of the item. The Clerk of the Hearing Board shall notify all interested persons of such withdrawal.

RULE 25. FAILURE TO APPEAR FOR HEARING

If a hearing is properly noticed and a party fails to appear at the hearing, the Hearing Board may deny the petition or appeal, or may take action based upon the party's express admissions or upon other evidence, and affidavits may be used as evidence without any notice thereof.

RULE 26. FINDINGS

(a) A party may request formal written findings no later than at the conclusion of its hearing before the Hearing Board.

(b) When findings have been requested, they shall be adopted within 45 days of the oral announcement of the decision, provided however, that the Hearing Board may grant in its discretion extensions up to a maximum of 60 days when the 45 day time limit would unduly burden the preparer of the findings.

(c) Unless the Hearing Board orders written findings to be otherwise prepared, such findings shall be prepared as follows: the party prevailing at the hearing shall prepare proposed findings within 10 days of the close of the hearing; such proposed findings will be served by mail or personal delivery on the Hearing Board and the opposing party; the opposing party will have 10 days from receipt to comment in writing on the proposed findings and/or make proposed alternate findings; such comments and/or alternate proposed findings shall be served on the other party and the Hearing Board by mail or personal delivery. Upon receipt, the Chairperson of the Hearing Board, or a member designated by the Chairperson, shall review all proposed findings and/or comments and recommend final formal findings to the members of the Hearing Board who participated in the hearing for their adoption.

(d) The Clerk of the Hearing Board shall set the recommended final formal findings for hearing, and send copies of them to all parties, with 10 days notice.

(e) At the hearing, the Hearing Board shall adopt its findings, which shall then be set forth in the Hearing Board's written decisions pursuant to Rule 28.

RULE 27. COMPLIANCE SCHEDULES

In granting a variance from the Air Pollution Control District's Rules and Regulations, the Hearing Board shall specify a final compliance date by which any article, machine, equipment, or contrivance which is the object of the variance will be brought into full compliance with all applicable requirements of these Rules and Regulations by the expiration date of the variance. In addition to any conditions imposed when granting a variance, the Hearing Board shall also specify a compliance schedule, except when granting an interim variance. If the person subject to such schedule fails to abide by its terms, the Air Pollution Control Officer may seek revocation or modification of the variance by the Hearing Board pursuant to Section 42356 of the Health and Safety Code and may take enforcement action pursuant to Section 42400 of the Health and Safety Code.

RULE 28. DECISION

The decision shall be made by a formal action of the Hearing Board at the hearing. A written minute order of the decision shall be filed with the Clerk of the Hearing Board and shall include the reasons for the decision. A copy of the decision shall be mailed or personally delivered to all parties or their attorneys. Decisions shall be filed and mailed or delivered by the Clerk of the Hearing Board as soon as possible following the hearing.

RULE 29. EFFECTIVE DATE OF DECISION

(a) The decision shall become effective on the date issued by the Hearing Board, unless the Hearing Board orders otherwise.

(b) When a petition for rehearing is timely filed the filing of such petition shall automatically stay the effective date of the decision until the final adjournment of the first regular meeting of the Hearing Board following the date the petition for rehearing was filed, unless the Hearing Board acts upon it before that time. If the final date for filing a petition for rehearing falls on a regular meeting day and a petition for rehearing is filed on that day, the following regular meeting shall for purposes of this section be deemed to be the first regular meeting following the date the decision would otherwise become effective. If the petition for rehearing is not granted, the decision shall become effective on the date the petition is denied or deemed denied.

(c) In the event the Hearing Board determines to rehear on its own motion pursuant to Health and Safety Code Section 40821, the decision of the Hearing board is not effective until a new decision, following the rehearing, is reached and issued by the Hearing Board pursuant to Rule 28.

RULE 30. REHEARING

(a) The Hearing Board may order a rehearing of all or part of the matter on which the decision was rendered on petition of any party or member of the public.

(b) A petition for rehearing may be filed with the Hearing Board within 10 days of the mailing of personal delivery of the decision pursuant to Rule 28. Such petition shall be in writing and shall set forth the reasons and grounds for rehearing. Petitioner should state in his or her petition if he or she desires to be heard. If such a petition is timely filed, the power to order a rehearing shall expire on the day of final adjournment of the first regular meeting of the Hearing Board following the filing of such petition. The petition shall be placed on the agenda for that regular meeting. If the Hearing Board does not act upon the petition before the final adjournment of that regular meeting, the petition shall be deemed denied on that date.

(c) The Hearing Board will determine the petition on the basis of the information set forth in the petition. The petitioner may appear, and with the consent of the Hearing Board, be heard.

(d) The Clerk shall give written notice to the petitioner of the disposition of the petition within 5 days after the Hearing Board acts upon it. If the Hearing Board fails to act within the time prescribed in these rules, such notice shall be given within 5 days after the final date upon which action could be taken. The notice shall set forth the date upon which the petition was granted, denied, or deemed denied.

RULE 31. SUBMITTED MATERIAL

An applicant, District, or member of the public, except for emergency variances, has 7 days prior to the Hearing Board meeting to supply written information to the Clerk of the Board. If the written material is not submitted by the 7 day deadline, the Air Pollution Control Hearing Board will not consider the written material and it may not be entertained unless good cause is shown and approved by the majority of the Board.

Log of Amendments

Amended (Rules 3, 5, 10, 15, 20, 21, 22, 24, 30, and 31, effective November 5, 2013)